

## **REMARKS**

Favorable reconsideration and allowance of the claims of the present application are respectfully submitted.

Claim 30 is pending in this application.

In the present office action, the Drawings were first objected to under 37 C.F.R. 1.83(a) as allegedly not showing every feature of the invention specified in the claims.

Claim 30 was further rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Allegedly, the Examiner indicates it is not clear who provides first and second computing resources and who monitors terms of the contract.

Claim 30 was further rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over non-patent literature News Release by Hewlett Packard "Compaq Extends Capacity on Demand to ProLiant Server Platform ("HP") in view of non-patent literature entitled "IBM Tivoli Pushes Business Impact Management" ("Follet").

Claim 30 was further rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Landherr et al. (US 6,880,156) ("Landherr")

The rejections and objections in this case is respectfully traversed.

With respect to the drawing objections under 37 C.F.R. 1.83(a), applicants respectfully traverse. Originally filed Fig. 1 clearly supports the claimed limitations directed to the provision of first computing (deterministic) resource and second computing (stochastic) resource control and monitoring infrastructure. At least steps 220, 230 of Fig. 3 speak to the utilization of the second stochastic resources for contract fulfillment and, at step 230, Fig. 3, performing the monitoring of the second computing resources during contract fulfillment. Further, step 240, Fig.

3, as filed, clearly support the claimed step of detecting a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled within the time tolerance (time slots shown in Fig. 3 at step 220) and, that in response to detection of failing contract fulfillment, finishing the contract on the deterministic resources allotted at step 250 as the system guarantees contract fulfillment.

Notwithstanding this, Applicants note that 35 U.S.C. 113 indicates that the applicant shall furnish a drawing where necessary for the understanding of the subject matter to be patented. Further, MPEP 601.01(f) provides “It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113”. This means that the drawings are not always necessary. In the event a claim element is known in its functionality and definition, as understood from the specification, it is not necessary to represent the element in the drawings.

Thus, Applicants request that the Examiner remove the objection to the Drawings.

With respect to the rejection of Claim 30 under 35 U.S.C. 112, second paragraph, applicants respectfully traverse.

In response, applicants further amend Claim 30 to set forth in greater particularity that a contract guarantor provides both the first and second computing resources. Respectfully no new matter is being entered as clear support may be found in the specification, e.g., at paragraphs [0011]-[0013] which speaks to the guarantor entity as comparing terms of the contract and checking whether it is possible to fulfill the conditions of the contract using the deterministic and stochastic computing resources. In particular, at paragraph [0013], there is described how the stochastic computing resource is constituted as a grid computing network with computing

machines that compute their own tasks and provide computing capacity during idling states to the guarantor for fulfilling requested computing capacity according to a contract. The deterministic resources are dedicated computing resources that are under control of the general controller as specified by the computing service provider, i.e., guarantor (See paragraph [0029] and paragraph [0033] describing the fulfillment of the contract is guaranteed by the provider as the guarantor).

Further in response, applicants further amend Claim 30 to set forth in greater particularity that the monitoring and detecting steps e) and f) as set forth in Claim 30 are performed by a controller device (general controller 1 shown in Fig. 1 of the present application). No new matter is being entered as the specification is replete with references to the general controller determining conditions of contract fulfillment; firstly, by the general controller unit 1 accepting a contract with given conditions (paragraph [0034]) and, by examining the fulfillment status of the contract (paragraph [0038]).

Moreover, the Claim 30 step e) recitation of detecting a probability of failing contract fulfillment is further being amended to clarify that the controller first determines whether the contract is incapable of being fulfilled by the second computing resource (i.e., stochastic resource) within the time tolerance.

In view of the amendment to Claim 30, Applicants respectfully submit that the present §112 rejection has been obviated and respectfully request withdrawal thereof.

Turning to the §103 rejections, Applicants submit that the applied prior art fails to render Applicants' amended Claim 30 unpatentable. "To establish a prima facie case of obviousness of a claimed invention all the claimed limitations must be taught or suggested by the prior art". *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 44, 496 (CCPA 1970). Respectfully, neither HP, nor

Follet teach or suggest a contract fulfillment method in the manner as set forth in the present application.

With respect to the rejection of Claim 30 under 35 U.S.C. 103(a) as being unpatentable over the combination of HP in view of Follet, applicants respectfully traverse.

HP and Follet speak to computing resources generally and the monitoring of resources between predefined thresholds that can be set based on terms of a contract. Applicants respectfully disagree. HP speaks to an entity using servers provided by Compaq which can provide IT solutions including a “pay for use” model. This says nothing about using two types of computing resources, a stochastic resource (provided by spare cycles/capacity of grid computing devices) and deterministic computing and the monitoring of use of stochastic resource in order to perform contract fulfillment. In fact, HP does not speak to all about contract fulfillment, but rather the custom configuration of computing devices for specific applications that meet customer’s deployment requirements. The customer’s ability to dial-up and dial-down provisioning is antithetical to the invention as the present invention provides computing capacity according to a stochastic process (stochastically provided from the grid, for example), with the second computing resource incapable of being controlled by the guarantor, much less controllable by the user.

Follet is no help in this regard as it is just oriented to making available additional server capacity as more users are connecting and using server capacity. That is, Follet is a reactive system that monitors CPU utilization and application’s memory allocation and decides in real time to increase server capacity to meet excessive demand.

The combination of HP and Follet thus does not address the ability to provide contract fulfillment based on use of stochastic resources (spare cycles provided by a harvester or network

computing grid) and providing a guarantee of contract fulfillment using the deterministic resources. The Examiner admits that both HP and Follet do not explicitly teach using Stochastic process and respectfully reject the Examiner's indication that it would be obvious to improve a product using existing technology. However, absent a teaching or suggestion, applicant fail to see how HP and Follet can suggest to skilled artisan use of stochastic resources to provide contract fulfillment. At best, HP and Follet teach a more granular allocation of computing resources completely under control based on user demands or actions only (and not on contract terms), as HP and Follet do not teach provision of computing services for contract fulfillment.

Moreover, the conditions that are being monitored in Follet includes server usage in response to varying levels of user demand for that server. However, respectfully, this does not rise to the level of detecting, by a controller device, a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled by the second computing resources within the time tolerance. The monitoring of CPU usage and application memory allocation as taught in Follet is not the same as determining whether a contract is capable or incapable of being fulfilled by second computing (stochastic) resources within a specified/contracted time tolerance.

Absent the aforementioned teachings or suggestions, the combination of HP and Follet does not render the present invention unpatentable under 35 U.S.C. 103(a) and the Examiner is respectfully requested to withdraw this rejection.

Lastly, with respect to the rejection of Claim 30 under 35 U.S.C. 103(a) as being unpatentable over Landherr, applicants respectfully disagree. Like Follet, this reference teaching the adaptation of additional servers in view of user demand (excessive load), however, as argued before, Landherr does not teach or suggest to skilled artisan use of the second computing

resources (stochastic resources) to provide contract fulfillment and guaranteeing contracted service fulfillment by deterministic resources. Further, Landherr does not teach the monitoring and detecting, by a controller device, a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled by the second computing resources within the time tolerance.

In sum, each of the solutions provided by HP, Follet and Landherr teach allocating additional computing resources (eg. servers) in response to detection of excessive user load or demand. However, each of the system described in these cited references suppose use of resources that are under complete control of the user/owner (i.e., owner has inherent ability to add or delete resources). To the contrary, as claimed in amended Claim 30, second computing resources capable of providing computing capacity according to a stochastic process are incapable of being controlled by the guarantor and these are the resources available in the present invention that are first attempted to be used for providing contract fulfillment. These notions are not taught nor suggested to ones of ordinary skill in the art to render the present invention as claimed in Claim 30 as amended.

Therefore, Applicants submit the present §103 rejection has been obviated, and respectfully request withdrawal thereof.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited. Should the

Examiner believe a telephone conference might expedite prosecution of this case, it is respectfully requested that he call applicant's attorney at (516) 742-4343.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Steven Fischman', with a stylized flourish at the end.

Steven Fischman  
Registration No. 34,594

Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
SF:gc:bk